

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO, et al.,

Plaintiffs,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Case No. 2:15-cv-02467
Chief Judge Sargus
Magistrate Judge Jolson

Defendants.

**UNOPPOSED MOTION OF THE STATES OF NEW YORK,
WASHINGTON, CALIFORNIA, MARYLAND, NEW JERSEY, OREGON,
RHODE ISLAND AND VERMONT, THE COMMONWEALTH OF
MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA
FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

The States of New York, Washington, California, Maryland, New Jersey, Oregon, Rhode Island and Vermont, the Commonwealth of Massachusetts, and the District of Columbia (the Amici States) hereby move for leave to file an amicus curiae brief in opposition to plaintiffs' motion for a preliminary injunction. This motion is unopposed.

ARGUMENT

Participation as amicus curiae is "a privilege within the sound discretion of the courts . . . depending upon a finding that the proffered information is timely, useful or otherwise necessary to the administration of justice." *Ball v.*

Kasich, 2017 U.S. Dist. LEXIS 116145, at *24 (S.D. Ohio, Sargus, C.J., July 25, 2017) (citations and internal quotations omitted). A non-party “may submit a brief as an amicus curiae in order to assist the court in reaching a proper decision.” *Rowland v. GGNSC Ripley, LLC*, 2016 U.S. Dist. LEXIS 101733, at *10 (N.D. Miss. August 3, 2016) (citing *Jin v. Ministry of State Sec.*, 557 F.Supp.2d 131, 136 (D.D.C. 2008)). “An amicus brief should normally be allowed” if the amicus “has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of Env’t v. DeRuyter Bros. Dairy*, 54 F. Supp.2d 974, 975 (E.D. Wash. 1999).

Here the Amici States have their own interests in this matter that are distinct from those of the parties. The Amici States are situated along the shores of the Atlantic and Pacific Oceans, the Chesapeake Bay and its tributaries, the Great Lakes, and Lake Champlain and are downstream from, or otherwise hydrologically connected with many of the Nation’s waters. As such, the Amici States are recipients of water pollution generated not only within their borders but also from sources outside their borders over which they lack jurisdiction. The Amici States require a protective, clear, practical, and science-based definition of “waters of the United States” under the Clean Water Act in order to maintain a strong federal foundation for water pollution control that preserves the integrity of their waters.

Enjoining the Clean Water Rule would implicate the environmental interests of the Amici States and their citizens, and affect the Amici States' proprietary interests. The Amici States own, operate, finance and manage property within their borders, including lands, roads, bridges, buildings, drinking water systems, sewage and stormwater treatment or conveyance systems, and other infrastructure and improvements. Inadequate or ineffective protection of waters under the Clean Water Act, such as floodplain waters which mitigate the damaging effects of floods, will cause harm to the States' properties and increase the costs of operating and managing them.

The Clean Water Rule that plaintiff States seek to enjoin would protect the Amici States' environmental and proprietary interests by strengthening and clarifying Clean Water Act protections of waters within the Amici States' jurisdictions, and by helping to ensure that polluted water from other states does not flow into the Amici States' waters. Granting the Amici States amicus status should not delay these proceedings nor prejudice the other parties who are unopposed to this motion.

CONCLUSION

For the foregoing reasons, the Amici States respectfully request that this Court grant their motion for leave to file the attached amicus curiae brief.

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